

ELIZABETH RITTER
ATTORNEY AT LAW

2346 DOUGLAS ROAD
CORAL GABLES, FLORIDA 33134

FL BAR No. 0800104
PH. (305) 893-6344

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May 9, 2005

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: Comments of Port Norris Radio
Amendment of Section 73.202(b)
FM Table of Allotments
FM Broadcast Stations (Port Norris, NJ)
MB Docket No. 04-409

Dear Ms. Dortch:

Transmitted herewith on behalf of Port Norris Radio are an original and four copies of its Comments with respect to the above-referenced rule making proceeding.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,



M. Elizabeth Ritter

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20054

MAY - 9 2005

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-409
Table of Allotments)	RM-11108
FM Broadcast Stations)	
(Port Norris, New Jersey))	

REPLY COMMENTS OF PORT NORRIS RADIO

Port Norris Radio ("PNR"), by its attorneys, hereby submits these reply comments in response to the counterproposal filed by CXR Holdings, Inc. in this proceeding. *Public Notice*, Report No. 2704, Rel. Apr. 22, 2005 ("Notice"). As is set forth in detail below, the counterproposal outlined in the *Notice* is contrary to the public interest inasmuch as it merely proposes to move an allotment from one suburb of Richmond to another while foreclosing the provision of new broadcast service to Port Norris, New Jersey. As a result, the counterproposal should not be adopted.

I. Background

The *Notice* is a result of a counterproposal filed in response to a notice of proposed rule making ("NPRM"), dated November 5, 2004, to add Channel 299A, Port Norris, New Jersey to the table of allotments. 19 FCC Rcd. 22010 (MB, 2004). The petition for rule making ("Petition") filed on August 18, 2003, by Dana J. Puopolo, seeks, and the *NPRM* proposes, allotting Channel 299A to Port Norris, New Jersey.

On December 27, 2004, CXR Holdings, Inc. ("CXR"), filed a counterproposal in this proceeding. CXR proposes to change the channel, class and community of license of station WDYL(FM) from Channel 266A, Chester, Virginia to Channel 265B1, Lakeside,

Virginia. To permit this change, CXR requests changing the allotment at Fruitland, Maryland from Channel 298B1 to Channel 273B; deleting Channel 273B allotted to Princess Anne, Maryland; allotting Channel 299B1 to Willards, Maryland; and changing the allotment at Warsaw, Virginia from Channel 264A to Channel 298A.

II. The Counterproposal would not Achieve a Preferential Arrangement of Allotments.

The CXR counterproposal proposes changes to the table of allotments in six cities with a net gain of zero new allotments. Before and after the counterproposal, there will only be four available allotments. In comparison, the Port Norris, New Jersey proposed allotment will provide first local aural service to a new community without the loss of local service to a neighboring community. This is a preferential arrangement of allotments.

As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88, 91 (1982). CXR seeks approval of its counterproposal on the grounds that the proposal would provide first local service to Lakeside, Virginia and Willards, Maryland and thus is theoretically preferable to adding a first full-time aural service allotment in Port Norris, New Jersey.

In point of fact, however, the real effect of the proposal is merely to permit the relocation of WDYL from Chester, Virginia to Lakeside, Virginia, two communities located within the Richmond Urbanized Area. The Commission has recognized that a proponent is not to be given credit for providing first local transmission service if the new community of license is within an urbanized area unless the proponent can demonstrate

that the proposed new community of license is sufficiently independent of the urbanized area under the factors set forth in *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988) (“Tuck”). In the counterproposal, CXR proposes to relocate WDYL within the Richmond Urbanized Area from Chester to Lakeside with proposed operations at a higher power and a new transmitter location. Unlike other proposed relocations within an urbanized area, WDYL will be increasing its coverage of the Richmond Urbanized Area from less than 50% to greater than 70%. *See* Counterproposal, Exhibit E, Figure 3. As a result of this significant increase in coverage of the Richmond Urbanized Area, WDYL should be considered a move-in station rather than a relocating existing Richmond Urbanized Area station. Accordingly, the *Tuck* factors should be analyzed before CXR is given credit for first local service for Channel 265B1 in Lakeside, Virginia. *Cf. Moncks Corner, Kiawah Island and Sampit, South Carolina*, 15 FCC Rcd 8973 (MMB, 2000) (no *Tuck* analysis required because already providing greater than 50% coverage to the Charleston, South Carolina Urbanized Area and will continue to do so if proposal granted). Applying the *Tuck* factors in the present case, it is clear that CXR cannot be credited with providing first local transmission service to Lakeside.

A. Lakeside is Dependent on the Richmond Urbanized Area.

In *Tuck*, the Commission detailed the factors to be used to assess the independence of a smaller community from the larger urbanized area. Of particular importance is the interdependence between the proposed community of license and the major community of the urbanized area. Applying the factors set forth in *Tuck*, it is clear that Lakeside is interdependent with the Richmond Urbanized Area and that, as a result,

the CXR counterproposal cannot be credited with providing first local transmission service to Lakeside:

1. Lakeside depends on the Richmond Urbanized Area for media that covers Lakeside's local needs, interests and advertising.

There are no dedicated media outlets in Lakeside. Lakeside is served by dozens of radio stations located within the Richmond Urbanized Area. A number of these stations are located less than five miles away from Lakeside in Richmond. The local newspapers serving Lakeside are Henrico County weekly papers or daily papers from Richmond. Since Lakeside has no dedicated media outlets, Lakeside businesses advertise their services using media outlets from the Richmond Urbanized Area.

2. Lakeside has no locally elected government. Lakeside relies on the Richmond Urbanized Area for numerous municipal services.

Government services in Lakeside are provided by Henrico County. Henrico County government includes the Board of Supervisors, a County Manager and a General Registrar. The Supervisors are elected to four year terms and the Board of Supervisors is the policy-making body for the county.

The public elementary school in Lakeside is part of the Henrico County Public School district. The junior high and high schools for Lakeside are located in the Richmond Urbanized Area. Public library service is provided by Henrico County.

There is a volunteer fire department in Lakeside but public safety services are provided by Henrico County. Other government services, such as the department of motor vehicle and social services, are located in the Richmond Urbanized Area.

3. Lakeside does not have its own telephone book provided by the local telephone company.

Lakeside does not have its own telephone book provided by the telephone company. Listings for Lakeside are placed in the Richmond telephone book.

4. Lakeside has relatively few commercial establishments and very limited health facilities.

Lakeside has a limited number of commercial establishments compared to the number of establishments available in the Richmond Urbanized Area. There are limited medical facilities in Lakeside and residents must travel to Richmond or another neighboring city to reach a hospital or large treatment center.

In short, the conclusion is inescapable that Lakeside is inextricably intertwined with the Richmond Urbanized Area. Under such circumstances, CXR should not be credited with bringing first local service to Lakeside, a community that receives service from numerous stations in the Richmond Urbanized Area. Furthermore, taking the counterproposal under consideration as a whole, the Commission is left to compare the allocation of Channel 299A to Port Norris, a community of 1507 persons, to the allocation of Channel 299B1 to Willards, Maryland a community of 938 persons. Applying the standards established in *Revision of FM Assignment Policies and Procedures*, the allocation to Port Norris results in a clearly superior allocation.

Conclusion

For the foregoing reasons, the counterproposal should be denied and dismissed.

Respectfully submitted,

PORT NORRIS RADIO

By: 
M. Elizabeth Ritter
Its Attorney

M. Elizabeth Ritter,
Attorney at Law
2346 S. Douglas Road
Coral Gables, Florida 33134-5304

Telephone: (305) 893-6344
Fax: (305) 661-0602

Dated: May 9, 2005

CERTIFICATE OF SERVICE

I, M. Elizabeth Ritter, hereby certify that copies of the foregoing "Comments of Port Norris Radio" were sent this 9th day of May, 2005, by first class U.S. Mail, postage prepaid, to the following:

Marlene Dortch*
Secretary
Federal Communications Commission
445 Twelfth Street, SW
TW-A325
Washington, D.C. 20554

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90405

Kevin F. Reed
Dow Lohnes & Albertson PLLC
1200 New York Avenue, NW
Suite 800
Washington, DC 20036-6802

Mark N. Lipp
J. Thomas Nolan
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, NW
Washington, DC 20005-2004

John M. Pelkey
Garvey Schubert Barer
1000 Potomac Street, NW
Fifth Floor
Washington, DC 20007-3501


M. Elizabeth Ritter

* Via Hand Delivery